



**TYPES OF MARKET MANIPULATION IN ENERGY MARKETS IN LIGHT OF EUROPEAN NATIONAL REGULATORY
AUTHORITIES (NRA) CASE LAW**

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REMIT SANCTION DECISIONS – INTRODUCTION

Sanctions applicable to infringements for REMIT (incl. market manipulations) are laid down by the Member States in national law

Different models of sanctioning for market manipulations in Energy markets in EU countries

only administrative sanctions for market manipulations in energy markets

only criminal sanctions for market manipulations in energy markets

both administrative and criminal sanctions for market manipulations

sanctions imposed by national regulatory authority

sanctions imposed by public prosecutor/court

sanctions imposed either by national regulatory authority or public prosecutor/court

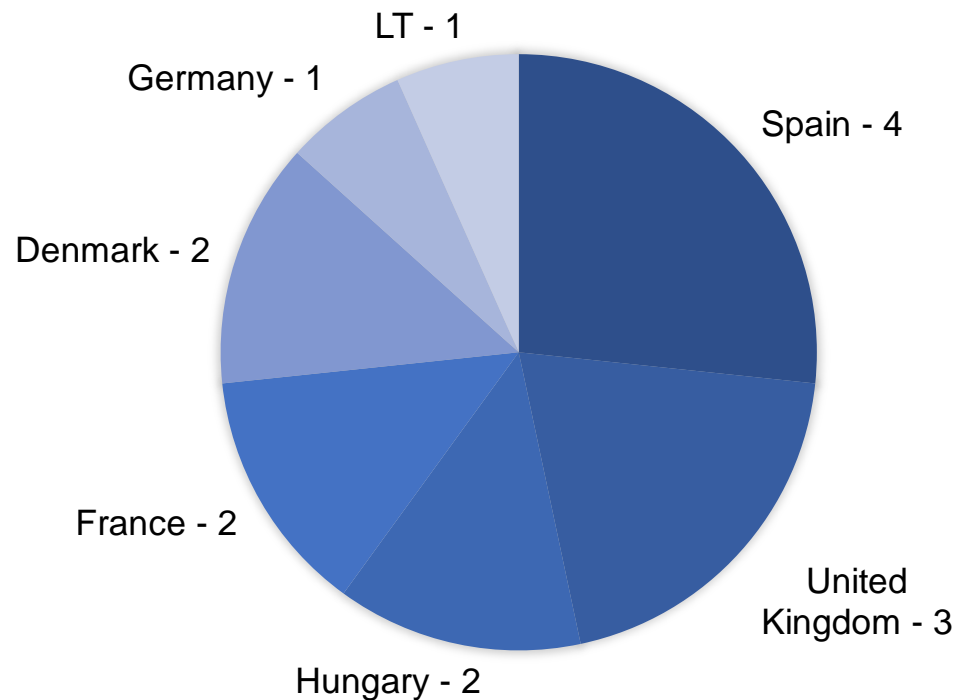
sanctions imposed on legal persons (e.g. company) and natural persons (e.g. traders)

sanctions imposed only on natural persons

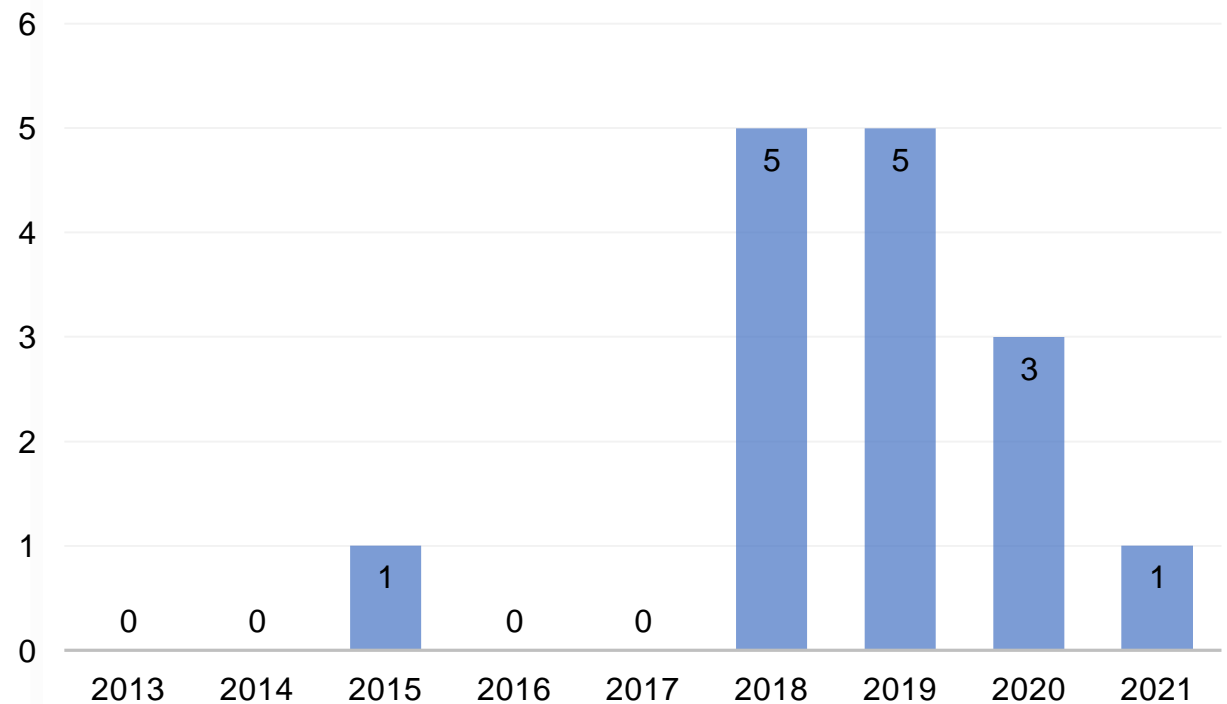
STATISTICS OF REMIT SANCTION DECISIONS

Total number of sanction decisions issued so far under REMIT regarding market abuse practices	15
Number of sanction decisions which concerned prohibition of market manipulation (art. 5 of REMIT)	15
Number of sanction decisions which are final	10
Total value of imposed fines	approx. EUR 83,5 million
Average value of fine	approx. EUR 5,5 million

Number of sanction decisions per country



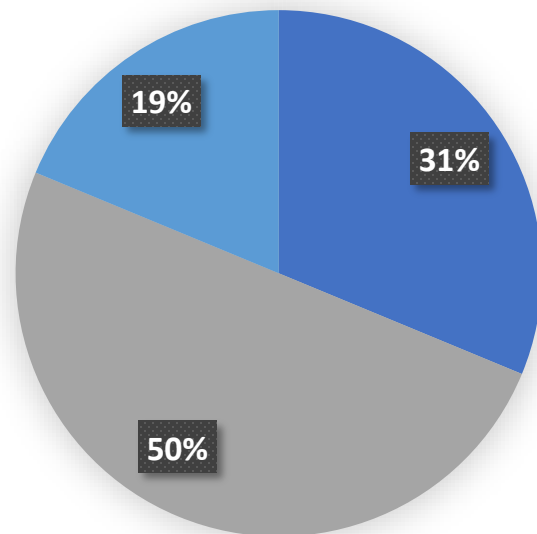
Number of sanction decisions per year



TYPES OF MARKET MANIPULATIONS – SYSTEMATIZATION

Market manipulations specific for energy markets	Transaction/order based market manipulations which are not specific for energy markets	Market manipulations comprising dissemination of false or misleading information
transmission capacity hoarding capacity withholding	layering spoofing marking the close others (e.g. wash trades, improper matched orders, cross-market-manipulations)	spreading false or misleading information through the media other behaviours designed to spread false/misleading information

Types of market manipulations against sanction decisions of NRAs



- Market manipulations specific for energy markets
- Transaction/order based market manipulations which are not specific for energy markets
- Market manipulations comprising dissemination of false or misleading information

Transmission capacity hoarding

- ▶ practice involving (i) the acquisition of all or decisive part of the available transmission capacity (ii) without using it or without using it effectively
 - market participant acquires all or part of the available transmission capacity through buying and selling simultaneously contract(s) for the supply of electricity in two bidding zones (in case of implicit capacity allocation) or acquires such capacity unbundled from the energy (in case of explicit capacity allocation)
 - non-use of capacity (in case of implicit capacity allocation) occurs when market participant performs reverse wash trades (e.g. selling in bidding zone A + buying in bidding zone B and buying in bidding zone A + selling in bidding zone A) or (in case of explicit capacity allocation) acquires transmission capacity in one direction (from bidding zone A to B) and, at the same or at a later time, acquires transmission capacity for the same delivery time in the opposite direction (from bidding zone B to A) => in result market participant does not deliver electricity between bidding zones A and B
 - use of capacity can be considered non-effective if capacity is acquired with the purpose of preventing other market participants from using it or to create or enhance a price divergence between bidding zones

- ▶ Statsadvokaten for Særlig Økonomisk og International Kriminalitet (DK) decision of 30 October 2018 regarding Energi Danmark A/S

- ▶ Statsadvokaten for Særlig Økonomisk og International Kriminalitet (DK) decision of 21 December 2018 regarding Neas Energy A/S

Capacity withholding

- ▶ not offering or limiting without justification available production, storage or transportation capacity on the market by market participant with the relative ability to influence the price or the interplay of supply and demand of a wholesale energy product (physical withholding)
 - ▶ offering available generation capacity at prices which are above the market price and do not reflect the marginal cost (including opportunity cost) of the market participant's asset, which results in the related wholesale energy product not being traded or related asset not being dispatched (economic withholding)
 - first element to assess is whether the market participant concerned is able, in the case specific circumstances, to influence the price or the interplay of supply and demand of a wholesale energy product by engaging in such behaviour (e.g. whether market participant is pivotal supplier i.e., a power supplier whose capacity must be used to meet peak demand and whose capacity exceeds the market's supply margin)
 - second element to assess is whether the market participant has no legitimate technical, regulatory (e.g. force majeure or localised transmission constraints) and/or economic justification (e.g. opportunity costs i.e. producing at a different point in time for energy-limited generation assets or producing in a different sequential market for capacity-limited generation assets) for its behaviour when it does not offer its available generation capacity or has offered it above marginal cost
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- ▶ CNMC (ES) decision of 24 November 2015 regarding Iberdrola Generación S.A.U.
 - ▶ MEKH (HU) decision of September 2019 regarding MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság

TRANSACTION/ORDER BASED MARKET MANIPULATIONS WHICH ARE NOT SPECIFIC FOR ENERGY MARKETS #1

Layering & spoofing

- ▶ issuing multiple non-genuine orders at different price levels (layering) or single large/multiple non-genuine orders at the same price level (spoofing) on one side of the order book, in order to enter into one or multiple transactions on the other side of the order book
 - two common elements: (i) the issuing of non-genuine orders on one side of the order book in order to (ii) enter into transactions on the other side
 - market participant issues non-genuine orders to influence other market participants' behaviour, e.g. by creating the impression that there is a stronger selling or buying interest at decreasing/increasing price levels than there actually is (non-genuine orders are issued in order to enter into transactions at better conditions regarding price or volume on the other side of the order book)
 - transaction(s) on the other side of the book should occur within a period that allows the non-genuine orders to influence the behaviour of other market participants
 - non-genuine orders are usually cancelled shortly after the entering into one or multiple transactions on the other side of the order book
- ▶ CRE (FR) decision of 5 October 2018 regarding Vitol SA
- ▶ Ofgem (UK) decision of 5 September 2019 regarding Engie Global Markets
- ▶ CRE (FR) decision of 19 December 2019 regarding BP Gas Marketing Ltd
- ▶ CNMC (ES) decision of 25 February 2021 regarding Rock Trading World S.A.

TRANSACTION/ORDER BASED MARKET MANIPULATIONS WHICH ARE NOT SPECIFIC FOR ENERGY MARKETS #2

Marking the close

- ▶ buying or selling wholesale energy products deliberately at the close of the market in an effort to alter the closing price of the wholesale energy product (on any individual trading day or on particular dates such as future/option expiry dates or quarterly/annual portfolio or index reference/valuation points)
 - transactions executed at the close of the market and at prices very different from those prevailing in previous transactions
 - usually transactions with the minimum allowed volume or of reduced volume

- ▶ CNMC (ES) decision of 28 November 2018 regarding Galp Gas Natural, S.A.
- ▶ CNMC (ES) decision of 28 November 2018 regarding Multienergía Verde, S.L.U.
- ▶ NERC (LT) decision of 3 January 2020 regarding UAB Geros dujos

Others

- ▶ introducing orders on both sides of the order book in a way that prevents other market participants from entering into transactions with MAM (market area manager)
 - placing a high volume buy/sell order to serve MAM needs (depending on MAMs declared balancing needs and very shortly before MAM became active on the market)
 - almost at the same time placing an order on the other side of the order book displaying a low volume (typically an iceberg order with a hidden quantity) at a price exactly one price tick lower/higher than the order placed at step one

- ▶ BNetzA (DE) decision of 20 February 2018 regarding Uniper Global Commodities SE & two traders

MARKET MANIPULATIONS COMPRISING DISSEMINATION OF FALSE OR MISLEADING INFORMATION

Spreading false/misleading information through the media

- ▶ posting information via internet or issuing a press release which contains false or misleading statements about a wholesale energy product which is admitted to trading on an organized market, where the disseminating person knows, or ought to know, that the information is false or misleading

Other forms of dissemination of false/misleading information

- ▶ submitting by TSO incorrect information regarding the transmission capacities on the interconnector to the day-ahead auction
- ▶ submitting by participant of balancing mechanism to TSO false or misleading notifications which misrepresented estimate of expected generation for particular time periods (at the high demand periods) in order to induce the TSO to pay participant to generate
- ▶ submitting to TSO misleading (inflated) information on the minimum amount of power that generation plant can supply

- ▶ MEKH (HU) decision of September 2019 regarding MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság
- ▶ Ofgem (UK) decision of 25 March 2020 regarding InterGen (UK) Ltd, Coryton Energy Company Ltd, Rocksavage Power Company Ltd, Spalding Energy Company Ltd
- ▶ Ofgem (UK) decision of 16 December 2020 regarding EDF Energy (Thermal Generation) Limited

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